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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,627	05/16/2005	Daniele Favaro	AEG-37595	9650
116 7590 10/30/2009 PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			EXAMINER WALDBAUM, SAMUEL A	
			ART UNIT 1792	PAPER NUMBER
			MAIL DATE 10/30/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/525,627

**Applicant(s)**

FAVARO ET AL.

**Examiner**

SAMUEL A. WALDBAUM

**Art Unit**

1792

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. In the reply filed September 9, 2009 the applicant has added claims 7-14. The previous rejection is hereby withdrawn in favor of the new rejection found below.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

*Claims 1, 2, 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shinkai Kiyoyasu (JP 2000107116, hereafter '116) in view of Geiger (U.S. 4,064,887, hereafter '887) and JP 63-154150 (hereafter '150).*

4. Claims 1, 7-8 and 10: '116 teaches an automatic dishwasher, especially for built-in kitchenettes, comprising:

a cabinet equipped with a front door that seals the wash tub (Fig. 1 shows a cabinet surrounding the machine and part 9 shows the door that seals the tub);

housing at least one first and one second spray arm for washing the dishes placed in at least one rack (Fig. 1, part 11 shows the one rack, while parts 12 and 13 show the two sprayers);

said tub being closed on the bottom by a downward sloping panel that directs the wash water into a sump hopper which serves to collect and drain the water (Fig. 1, part 17 is the collector at the bottom of the downward sloping panel of the bottom of the machine);

`116 does not teach that the first spray arm extends coaxially with the sump hopper and that the second arm extends at a right angle to the bottom sloping panel. `887 teaches that a spray arm is coaxially aligned with the sump pump (Fig. 1 where part 22 is the sump pump, part 23 is the motor and part 26 is the first spray arm.) By placing the spray arm above the sump pump it provides support to the spray arm (Col. 3, line 37-46), It would have been obvious to one ordinary skilled in the art when the invention was made that to have placed the first spray arm above the sump pump to have provided support to the first spray arm, by moving the sump to be under the spray arm, thus allowing the spray arm with enough room to rotate.

`116 teaches that having the two arms that overlap is essential to increase the cleaning power of the washer without increasing the energy cost or the washing time ([0010]-[0014]). `887 teaches to optimize cleaning contact between the dishes and the sprayer to put the sprayer at an angle (Fig. 12 part 40, col. 4, line 45-78), also by angling the spray arm at a right angle to the slope of the bottom of the machine it avoids contact with the bottom, because when the arm is parallel to the bottom it can not hit the bottom (col. 4, line 1 – 69, col. 5, line 1 – 21). `150 is a dishwasher (fig. 1-4). `150 teaches that spray arm is angled and parallel to the bottom wall of the dishwasher (fig. 4, shows that spray arm, part 4 is angled and parallel to the bottom wall of the tub) with its axis of rotation perpendicular to the sloped bottom (fig. 4). It is obvious to one of

ordinary skill in the art at the time the invention was made to have angled the second spray arm above sloped bottom wall so its axis of rotation is perpendicular to the bottom wall as taught by '150 in apparatus '116 in view of '887 to have increased and optimized the power wash zone as taught by '116, and to have avoided contact with the bottom or other objects as taught by '887.

'116 shows two spray arms overlapping to create the power clean area (Fig. 1, parts 12 and 13 overlap, Fig. 2(b) shows overlapping region). '116 teaches that the two spray arms avoid hitting each other by timing the two arms so that they are always angled 90 degrees from each other (paragraph [0027]). The resulting combination of '116 in view of '887 and '150, where the plane of rotation of the 1<sup>st</sup> arm is horizontal and the plane of rotation of the 2<sup>nd</sup> arm is sloped. Therefore the 2<sup>nd</sup> plane of rotation must necessarily partly extend under the plane of rotation of the first spray arm.

5. Claim 2: '116 teaches a sump hopper serving to collect and drain the wash water is located in an off-center position on the bottom of the wash tub (Fig. 1, shows that the collector is in an off-center position on the bottom).

6. Claim 9: See Claim 1 above. Claims directed to apparatus must be distinguished from prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA). “[A]pparatus claims cover what a device is not what a device does” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990), meaning that the spray arms of apparatus '116 in view of '887 and '150 that the water exiting the second spray arm from the portion farthest from the first spray arm would be discharged upwards before combining with the first spray arm since the second spray arm is

angled, while the water exiting second spray arm near the first arm will interact with the water exiting from the first spray arm sooner since it is closer to the first spray arm.

7. Claim 11: `116 teaches a dishwasher where it is inherent that the cabinetry can be built around the height of the dishwasher therefore the dishwasher is suitable for being integrated with the cabinetry.

8. Claim 12: `116 teaches that the spray arm overlap (see claim 1 above, where the planes of rotation off the spray arms are at different vertical heights, fig 1) and `150 that the second spray arm is angled (see claim 1 above, fig. 4 with the planes of rotation extends below and above the other spray arm). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the second spray arm (the one that is angled) in apparatus `116 in view of `887 and `150 to have substantially equal to that of the first spray arm and that the plane of rotation would also extend below that of the first to create the overlap of the spray arms as `116 teaches to create the high intensity wash zone.

*Claim 4 rejected under 35 U.S.C. 103(a) as being unpatentable over Shinkai Kiyoyasu (JP 2000107116) in view of Geiger (U.S. 4,064,887) and JP 63-154150, as applied to claims 1-3 above, and further in view of Welch (U.S. 7,032,604, hereafter `604).*

`116 in view of `887 and `150 teach the limitation of claim 1 above.

9. Claim 4: They do not teach that the door extends across the full width of the cabinet. `604 teaches that the door extends the full length of the cabinet (Fig. 1, part 22, shows the door at a open position that extends the full length of the cabinet). One of ordinary skill in the art would have understood that if the door did not extend the full width of the cabinet, that the rack containing the wares would not have been able to be pulled out. Therefore, it would have been

obvious to one skilled in the art at the time the invention was made to have used a door that extends the full length of the cabinet to have made it possible to pull out the rack.

***Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shinkai Kiyoyasu (JP 2000107116) in view of Geiger (U.S. 4,064,887) and JP 63-154150 as applied to claim 1 above, and in further view of Gardell (U.S. 4,765,697, hereafter '697).***

'116, '887 and '150 teach all the limitation of claim 1 above.

10. Claim 5: They do not teach that the door is a solid component provided with a trim panel. '697 teaches a solid door with a trim panel (col. 1, line 40 - 68), by having the trim it allows the washing machine to look decorative in the environment of the kitchen (col. 1, line 40 - 68). Therefore it would have been obvious to one skilled in the art at the time the invention was made to have included a trim panel to the door for the dishwasher to have made it look decorative.

***Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shinkai Kiyoyasu (JP 2000107116) in view of Geiger (U.S. 4,064,887) and JP 63-154150, as applied to claim 1 above, and further in view of Willet (U.S. 5,215,491, hereafter '491).***

'116, '887 and '150 teach all the limitations of claim 1 above.

11. Claim 6: They do not teach the fact that the door has a transparent window. '491 teaches a transparent window located in the door (abstract) to allow the user to look in the dishwasher to see how the washing is progressing (col. 6, line 60 - 68, col. 7, line 1 - 10). Therefore it would have been obvious to one ordinary skilled in the art that the time the invention was made to have included a door with a transparent window to have allowed the user to look into the dishwasher.

*Claim 13 and 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shinkai Kiyoyasu (JP 2000107116) in view of Geiger (U.S. 4,064,887) and JP 63-154150, as applied to claim 10 above, and further in view of Jenkins (U.S. 3,861,769, hereafter '769).*

'116, '887 and '150 teach all the limitations of claim 10 above.

12. Claim 13: '116, '887 and '150 are silent about what kind of motor/pump are used within the dishwasher. '769 is a dishwasher. '769 teaches using a lower profile motor for feeding water to the spray arms so that the height of the washing basket can be optimized and the height of the under space (the area of the pump) can be minimized (col. 2, lines 55-66). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a low-profile pump-motor as taught by '769 in apparatus '116 in view of '887 and '150 to have optimized the height of the washing area and minimized the space needed for the pump-motor.

13. Claim 14: '150 teaches that two arms branch from the pump to the respective spray head (fig. 4, shows two manifolds branching off the pump cavity to their respective spray arms).

#### ***Response to Arguments***

14. Applicant's arguments filed September 9, 2009 have been fully considered but they are not persuasive.

15. Applicant is arguing that the prior art does not suggesting angling the second spray arm with respect to the slop of the bottom wall. The newly cited art clearly shows that a second spray arm in a dishwasher can be angled with the slope of the bottom wall (see above for citations). By angling the spray arm (which '150 teaches) the high intensity wash zone of '116 is increased by the fact that the water exiting the second spray arm at the are farthest from the first spray arm will interact with the water ejected from the first spray arm will increase along with the area of



the arms that overlap. Therefore more of the ejected water interact since the second spray arm discharges water towards the water discharged from the first spray arm, thus increasing the high intensity wash zone.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAMUEL A. WALDBAUM whose telephone number is (571)270-1860. The examiner can normally be reached on M-TR 5:45-3:15, every other F 5:45-2:15 est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Cleveland can be reached on 571-272-1418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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/S. A. W./  
Examiner, Art Unit 1792

/FRANKIE L. STINSON/  
Primary Examiner, Art Unit 1792